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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/069,691

06/03/2002

Stephen Gill

PA-9947

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36335 7590 05/18/2006

GE HEALTHCARE, INC.
IP DEPARTMENT
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EXAMINER

JONES, DAMERON LEVEST

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,691

Applicant(s)

GILL ET AL.

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/3/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the acceptable RCE filed 3/3/06.

Note: Claims 1-14 are pending.

RESPONSE TO APPLICANT'S ARGUMENTS/AMENDMENT

2. The Applicant's arguments filed 3/3/06 to the rejection of the claims made by the Examiner under 35 USC 103 have been fully considered and deemed non-persuasive for reasons of record in the Examiner's Answer mailed 11/29/05 and those set forth below.

103 Rejection

The rejection of claims 1-14 under 35 USC 103(a) as being unpatentable over Crane (US Patent No. 5,961,952) in view of any one of JP 11099192 or Schott Gaswerke (DE 29609958) or Walther (US Patent No. 6,200,658) is MAINTAINED for reasons of record in the office action mailed 11/29/05.

In summary, Applicant asserts (1) Crane only provides a vague reference to the use of a vial to hold its compounds. (2) Crane does not even disclose, teach, or suggest any type of coating on the inner surface of the vial. (3) There is no correlation between the metal complexes of the instant invention and the thallous chloride teaching of JP '192. (4) Schott Gaswerke provides no further description of a contained material, metal complexes, other than the generic reference to 'pharmaceutical'. (5) Walther contains no reference to radiopharmaceutical metal complexes. (6) The cited references disclose several other vial coatings that could be used by Crane instead of

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silica. (7) The Applicant reiterates the Examiner's clarification of the use of silicon and silica for one of the cited prior art references. (8) If the prior art logic is followed, then all radiopharmaceuticals would be provided in silica-coated vials, which Applicant's position is that the prior art teachings do not motivate one to make such changes.

First, Applicant is reminded that the rejection was made with a combination of references. Thus, attacking the references individually does not overcome the cumulative rejection. Secondly, Applicant is reminded that a reference does not have to go into detail regarding a feature, but if that reference vaguely discloses the used of such feature, then the reference is considered for its broad teachings. Thus, Crane does not have to discuss in detail a vial to hold its composition. The JP '192 document was cited for its teachings regarding glass containers with silica coated inner surfaces for use with radiopharmaceuticals. Hence, one should not limit its teachings to thallous chloride, but for what the document teaches as a whole. Likewise, Schott Gaswerke was cited for its teachings of the use of vials for pharmaceuticals. In regards, to the use of silicon and silica and Applicant reiteration of previous arguments, the Examiner's position was set forth in the office action mailed 11/29/05 and it is believed that the record is clear and not additional comments are necessary regarding the issue. Thus, both the previous Examiner's and Applicant's arguments are noted. While the prior art may disclose other possible vial coatings, the test for obviousness is not whether the prior art teaches that all vials should be coated with one particular type of coating, but what the prior art renders obvious. Thus, since the prior art disclose that one possible vial coating is that with silica, the references were combined to render the instant


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invention obvious. Hence, the combination of references when taken logically would motivate one to coat a vial with silica as well as other possible materials that are used in the art.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. L. Jones
Primary Examiner
Art Unit 1618

May 12, 2006